

8IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT A. CARNELL,

Defendant.

Case No. 18-cr-40066-JPG

**MEMORANDUM AND ORDER**

This matter is before this Court on the Government's motion to supplement the record on appeal pursuant to Federal Rule of Appellate Procedure 10(e)(2)(B) with exhibits from defendant Scott A. Carnell's sentencing hearing (Doc. 165).

The record on appeal in all cases consists solely of "(1) the original papers and exhibits filed in the district court; (2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk." Fed. R. App. P. 10(a). Generally, modification of a record on appeal is not permitted. Rule 10(e) is a limited exception to this general rule. It allows correction or modification "[i]f any difference arises about whether the record truly discloses what occurred in the district court[.]" Fed. R. App. P. 10(e)(1). When it arises, "the difference must be submitted to and settled by [the district] court and the record conformed accordingly." *Id.* "This rule is meant to ensure that the record reflects what really happened in the district court, but 'not to enable the losing party to add new material to the record in order to collaterally attack the trial court's judgment.'" *United States v. Banks*, 405 F.3d 559, 567 (7th Cir. 2005) (quoting *United States v. Elizalde-Adame*, 262 F.3d 637, 641 (7th Cir. 2001)).

The exhibits should already technically part of the record on appeal because they were actually tendered to the Court at the sentencing. However, they are not reflected on the docket sheet in connection with that hearing. Therefore, the Court finds that it would be appropriate to supplement the

existing docket sheet with the exhibits attached to the motion. According, the Court **GRANTS** the motion (Doc. 165) and **DIRECTS** the Clerk of Court to add the tendered exhibits as an attachment to the minutes of the sentencing hearing (Doc. 107).

**IT IS SO ORDERED.**

**DATED: November 8, 2019**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**